

REMARKS

This Amendment is in response to the Office Action dated June 1, 2005. Claim 7 has been amended in a non-narrowing manner to clarify, as requested in the Office Action, the reference to the "data links." Claims 1-7 are presently pending. No new matter has been added.

Objections

Claim 7 was objected to for certain informalities. The Applicant has amended claim 7 as requested in the Office Action. The Applicant requests withdrawal of this objection.

Double Patenting

Claim 1-7 were provisionally rejected under 35 U.S.C. §101 as claiming the same invention as that of claims 10-11 of copending U.S. Patent Application Serial No. 09/751,581 (the '581 patent application.) The Applicant traverses this rejection.

A statutory double patenting rejection is only appropriate if the claims are directed to the same invention. As indicated in M.P.E.P. §804 II.A.: "'Same invention' means identical subject matter." The M.P.E.P. further states: "A reliable test for double patenting under 35 U.S.C. §101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent." (M.P.E.P. §804 II.A.)

First, claim 7 of the present application is a method claim. Claims 10 and 11 of the '581 patent application are directed to a system. Therefore, these claims are not identical. They are not even directed to the same statutory class of subject matter. Accordingly, the Applicant requests that this rejection of claim 7 be withdrawn.

Second, claims 10 and 11 of the '581 patent application recite a processor which is not recited in claims 1-6 of the present patent application. Thus, claims 1-6 are not identical to claims 10 and 11 of the '581 patent application. Present claims 1-6 can be literally infringed by a system

which does not include the recited processor. Such a system would not literally infringe claims 10 and 11 of the '581 patent application. Therefore, the rejection of claims 1-6 for statutory double patenting is inappropriate and the Applicant requests that this rejection be withdrawn.

§102 Rejections

Claim 7 was rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,155,483 to Morimoto (hereinafter "Morimoto"). The Applicant traverses these rejections.

Morimoto discloses a system used in a digital radio communication system for switching from a regular channel to a standby channel. The switching to the standby channel requires that the data signal from the standby channel be retimed. (Col. 5, lines 1-2.) The Office Action asserts that "training a data link" corresponds to "obtaining synchronization between the two ends of the standby channel to a regular channel bandwidth/transmission rate in order to take over a failed regular channel." Morimoto teaches synchronization after switching to the standby channel.

Claim 7, however, recites "switching to use the trained idle data link when one of the active trained data links fails." Therefore, according to claim 7, the idle data link should already be trained before switching occurs. Morimoto does not train the standby channel until after the switching occurs. Only then is the standby channel synchronized so that it can replace the original channel. For at least this reason, claim 7 is patentable over Morimoto. Accordingly, the Applicant respectfully requests that this rejection be withdrawn.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Response To Non-Final Office Action
Application Serial No. 09/751,808

6 Docket No.: 08212/0200261-US0 (NC30318US)

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